

THE HONORABLE JOHN H. CHUN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

CASE NO. 2:23-cv-01495

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO
EXTEND TIME TO RESPOND TO
THE COMPLAINT**

NOTE ON MOTION CALENDAR:
October 27, 2023

Plaintiffs Federal Trade Commission ("FTC") and the states of New York, Connecticut, New Hampshire, Oklahoma, Pennsylvania, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, and Wisconsin ("Plaintiff States") respectfully oppose Amazon.com, Inc.'s ("Amazon") motion to extend its deadline to respond to the Complaint from October 19, 2023 to December 8, 2023, Dkt. #27, and respectfully request that the Court set deadlines for the Fed. R. Civ. P. 26(f) case management process and the start of discovery.

This case should begin moving forward without delay. The FTC and Plaintiff States allege that Amazon is engaged in a widespread course of conduct that maintains its monopolies in the online superstore and online marketplace services markets. Compl., Dkt. #1, ¶¶ 1-40.

Amazon’s monopolistic conduct reverberates throughout much of the online economy. Every year, it affects tens of millions of American households, hundreds of thousands of sellers on Amazon, and hundreds of billions of dollars in commerce. *Id.* ¶¶ 37, 205. Every day that passes is another day of harm inflicted on shoppers, sellers, and competition.

Moreover, Congress has expressed a “clear intent to prioritize speedy and efficient resolution of government antitrust suits.” *United States v. Google LLC*, 2023 WL 2486605, at *9 (E.D. Va. Mar. 14, 2023); *see FTC v. Vyera Pharms., LLC*, 2021 WL 76336, at *1 (S.D.N.Y. Jan. 8, 2021) (“The parties and the public have a significant interest in resolving the issues raised by the [government] plaintiffs’ claims with due expedition.”); *United States v. Dentsply Int’l, Inc.*, 190 F.R.D. 140, 145 (D. Del. 1999) (explaining that Congress recognized “the primacy of antitrust enforcement actions brought by the United States, and that such actions are of special urgency and serve a different purpose than private damages suits because they seek to enjoin ongoing anticompetitive conduct”).

Plaintiffs respectfully request that the Court set deadlines for a Rule 26(f) conference between the parties, the start of discovery, and the submission of a joint status report and discovery plan to the Court. If those dates are set and this case can move forward while Amazon’s anticipated motion to dismiss is being briefed and decided, Plaintiffs do not object to Amazon’s requested extension of time, provided that Plaintiffs receive a corresponding extension of time for their opposition brief. During the parties’ meet and confers, Plaintiffs proposed the following dates based on Amazon’s requested extensions for its opening and reply briefs and the initial scheduling order this Court entered in the *FTC v. Amazon Prime Enrollment and Cancellation* litigation, No. 2:23-cv-0932, Dkt. #49 (W.D. Wash. July 21, 2023):

- Rule 26(f) conference between the parties: November 9, 2023 (six weeks after service of the Complaint)
- Initial disclosures: November 22, 2023 (two weeks after the Rule 26(f) conference, adjusted to avoid Thanksgiving)
- Joint status report and discovery plan: November 30, 2023 (three weeks after the Rule 26(f) conference)
- Amazon's motion to dismiss: December 8, 2023 (71 days after service of the Complaint, as proposed by Amazon)
- Plaintiffs' opposition: February 6, 2024 (60 days after Amazon's motion)
- Amazon's reply: March 22, 2024 (45 days after Plaintiffs' opposition, as proposed by Amazon)

Takashima Decl., Ex. A at 3-4.

There is no reason to delay the start of discovery and the Rule 26(f) case management process. Three related cases are already in discovery. Any incremental burden on Amazon associated with starting discovery now is far outweighed by the public interest in moving this case forward.

Amazon's arguments only further underscore the need for discovery and case management discussions to begin immediately. The sole basis Amazon has offered for delaying discovery is its view that there may be scheduling issues related to the various related cases.

Id. at 1-2. Plaintiffs do not believe that there are any unique case management issues here, whether due to the related cases or otherwise, and it is common for there to be related cases to major government antitrust enforcement actions. However, to the extent there are any such issues, that is all the more reason to begin the Rule 26(f) process promptly so that the parties can

1 meet and confer regarding case management and submit a joint status report and discovery plan
 2 to the Court. It is not a reason to delay the Rule 26(f) process or the start of discovery. Plaintiffs
 3 explained to Amazon that they were willing to consider a longer time period between an initial
 4 Rule 26(f) conference between the parties and the deadline for a joint status report and discovery
 5 plan, which would give the parties additional time to meet and confer regarding case
 6 management issues, including scheduling and any issues associated with the related cases.
 7 Plaintiffs invited Amazon to propose any deadline it would consider acceptable. *Id.* at 2.
 8 Amazon declined to do so. *See id.* at 1.

9 Amazon has not taken a position on whether it will move to stay discovery pending its
 10 motion to dismiss. *Id.* (“I did not represent to you that Amazon would not file a motion to stay
 11 discovery Amazon reserves all rights with regard to scheduling issues.”) However, as this
 12 Court has previously noted in another case where Amazon was the defendant, “[a] pending
 13 motion to dismiss is generally not grounds for staying discovery,” *Dorian v. Amazon Web*
 14 *Services, Inc.*, 2022 WL 3155369, at *1 (W.D. Wash. Aug. 8, 2022) (citation omitted), and that
 15 is even more the case here, where Amazon has not yet filed a motion to dismiss. Accordingly,
 16 Plaintiffs ask the Court to set a schedule to move this case forward, including the start of
 17 discovery.

18 In the alternative, if the Court is not inclined to set a schedule for the start of discovery
 19 and the Rule 26(f) process at this time, Plaintiffs request that the Court set the following
 20 schedule for Amazon’s anticipated motion:

- 21 • Amazon’s motion to dismiss: November 9, 2023 (six weeks after service of the
- 22 Complaint)
- 23 • Plaintiffs’ opposition: December 21, 2023 (six weeks after Amazon’s motion)
- 24 • Amazon’s reply: January 18, 2024 (four weeks after Plaintiffs’ opposition)

1 Plaintiffs respectfully submit that this schedule strikes a reasonable balance between
 2 Amazon's request for additional time and the need to move this case forward. It doubles the
 3 amount of time Amazon would have for its opening brief under Fed. R. Civ. P. 12(a)(1)(A)(i)
 4 and extends Amazon's time to file a reply brief from the four days provided under Local Civil
 5 Rule 7(d)(3) to four weeks. At the same time, this schedule would have briefing complete by
 6 January 18, 2024—more than two months faster than a schedule based on Amazon's proposed
 7 timeline.

8 This schedule is particularly reasonable given that Amazon met with the FTC and several
 9 of the Plaintiff States multiple times before Plaintiffs filed their Complaint. Amazon has also
 10 briefed several motions to dismiss in related cases. *See, e.g., Frame-Wilson v. Amazon.com, Inc.*,
 11 No. 2:20-cv-0424, Dkt. #48 (W.D. Wash. Mar. 11, 2022) (denying Amazon's motion in part);
 12 *De Coster v. Amazon.com, Inc.*, No. 2:21-cv-0693, Dkt. #59 (W.D. Wash. Jan. 24, 2023) (same);
 13 *Hogan v. Amazon.com, Inc.*, No. 21-cv-0996, Dkt. #41 (W.D. Wash. Apr. 20, 2023) (granting
 14 motion on standing grounds not applicable here); *People of the State of California v.*
 15 *Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct. Mar. 30, 2023) (overruling demurrer).
 16 Amazon is hardly working from a blank slate.

17 For the reasons above, the FTC and Plaintiff States respectfully request that the Court set
 18 deadlines for a Rule 26(f) conference between the parties, the start of discovery, and the
 19 submission of a joint status report and discovery plan to the Court. If the Court does so,
 20 Plaintiffs do not object to a briefing schedule based on Amazon's requested date. In the
 21 alternative, Plaintiffs request that the Court set a shorter schedule, with Amazon's anticipated
 22 motion to dismiss due on November 9, 2023.

1 Dated: October 20, 2023

Respectfully submitted,

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9 *Attorneys for Plaintiff Federal Trade Commission*

10 I certify that this memorandum contains
11 1,291 words, in compliance with the Local Civil
12 Rules.

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